

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: INTERSTATE POWER AND LIGHT COMPANY	DOCKET NO. P-850
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ORDER ESTABLISHING ISSUE ON APPEAL

(Issued October 9, 2003)

On October 8, 2002, Interstate Power and Light Company (IPL) filed with the Utilities Board (Board) a petition for a permit to construct, operate, and maintain a natural gas pipeline serving Muscatine, Iowa. The petition has been identified as Docket No. P-850. The petition is for an existing pipeline built in 1980 and 1982 for which a permit was never requested or granted. The pipeline consists of approximately 3.1 miles of eight-inch and 0.1 mile of four-inch diameter pipe with a maximum allowable operating pressure of 275 psig.

Iowa Code § 479.7 (2003) requires the Board to set a hearing in a pipeline proceeding upon the filing of a petition. IPL amended its petition on January 13, March 26, and June 20, 2003. On July 23, 2003, the Board assigned this docket to an administrative law judge (ALJ). On July 28, 2003, the presiding officer issued an order establishing a procedural schedule and setting a date for an evidentiary hearing. A hearing was held as scheduled on September 4, 2003, and the ALJ issued a "Proposed Decision and Order [the Proposed Decision] Granting Permit and Waiver" on September 11, 2003.

In the Proposed Decision, the ALJ granted the petition for a pipeline permit, granted a waiver of 199 IAC 10.14(2) relating to railroad crossing angles; and determined that a civil penalty should not be imposed on IPL. (Proposed Decision at page 18.) The ALJ recognized that Iowa Code § 476.31 provides for civil penalties when a person violates chapter 479 or a Board rule adopted pursuant to that chapter. The ALJ also recognized that IPL violated chapter 479 by building the pipeline without a permit. (Proposed Decision at pp. 3-5.) However, the ALJ determined that when IPL discovered the situation, IPL reported it to the Board promptly and filed a petition for a permit shortly thereafter. The ALJ reviewed the steps IPL has taken to ensure future pipelines will not be constructed without a permit. The ALJ also considered the fact that IPL does not have any other known violations of this nature; that IPL constructed, operated, and maintained the pipeline in conformance with all other Board rules; and that there is no safety issue associated with the pipeline. (Proposed decision at p. 7.) Finally, the ALJ considered the fact that this violation was committed over 20 years ago by IPL staff members who no longer work for IPL. (Proposed Decision at pp. 6-8.) Considering all of these facts, the ALJ concluded that a civil penalty would not serve a valid punitive or deterrent purpose and declined to assess a civil penalty. (Id.)

Subrule 199 IAC 7.8(2) requires that appeals from the proposed decision of the presiding officer be filed within 15 days of the date the decision is issued. An appeal was timely filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate), challenging the decision not to assess civil penalties.

Consumer Advocate stated that it was not requesting a further briefing opportunity or oral argument.

No response was filed by Interstate Power and Light Company (IPL).

Pursuant to 199 IAC 7.8(2)"d," the Board must issue a ruling on the issues to be decided on appeal within 20 days of the filing of the notice of appeal. The Board finds there is one issue on appeal: "Should IPL be assessed a civil penalty for not obtaining a permit to construct the pipeline in question as required by Iowa Code § 479.5?"

Neither party has requested an opportunity to file briefs, so the Board will consider the appeal based upon the existing record and briefs already filed.

IT IS THEREFORE ORDERED:

Pursuant to 199 IAC 7.8(2)"d," the issue to be decided on this appeal is whether IPL should be assessed a civil penalty for its failure to obtain a permit to construct the pipeline in question, as required by Iowa Code § 479.5.

UTILITIES BOARD

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 9th day of October, 2003.